

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 02: Administration of Child Welfare Section 05: Administrative Appeal Hearings	
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POLICY OVERVIEW

The process outlined herein applies to all substantiated Child Abuse and Neglect (CA/N) determinations and denials of an Administrative Review made on or after October 15, 2006, the date in which the Indiana Department of Child Services (DCS) became Child Abuse Prevention and Treatment Act (CAPTA) compliant. See policy 2.03 Child Care Workers Assessment Review Process for guidance regarding Administrative Reviews of allegations substantiated prior to October 15, 2006.

An alleged perpetrator has a right to request an Administrative Appeal Hearing if substantiated allegations of child abuse and/or neglect (CA/N) are upheld in the DCS Administrative Review. An Administrative Appeal of the Denial of Administrative Review may also be requested if a DCS Administrative Review is denied.

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PROCEDURE

A request for an Administrative Appeal Hearing or a request for an Administrative Appeal of the Denial of Administrative Review may be submitted by an alleged perpetrator to the DCS Hearings and Appeals by email at hearingsandappeals@dcs.in.gov or by hand-delivery or mail to 302 W. Washington St., E-306, Indianapolis, Indiana 46204. DCS Hearings and Appeals will forward any timely and complete requests for an Administrative Appeal Hearing to the Office of Administrative Law Proceedings (OALP) and request the appointment of an Administrative Law Judge (ALJ)/Administrative Hearing Officer to conduct the hearing.

Note: If the substantiated assessment is against a minor perpetrator, the request for an Administrative Appeal Hearing must be made by the child's parent, guardian, attorney, Guardian ad Litem (GAL), or Court Appointed Special Advocate (CASA).

Administrative Appeal Hearings and Administrative Appeal of the Denial of Administrative Reviews are conducted by the Office of Administrative Law Proceedings (OALP) in accordance with Indiana Code (IC) 4-15-10.5, IC 31-33-26, 465 IAC 3-2-7, and 465 IAC 3-3.

If the substantiated assessment is against a DCS Employee or a Child Care Worker (CCW) as defined in DCS policies 2.03 Child Care Worker Assessment Review Process and 4.45 Assessment of DCS Staff Alleged Perpetrators, the Administrative Appeal Hearing will be held within 20 calendar days of the date the request is received by DCS Hearing and Appeals unless the alleged perpetrator waives the time limit in writing as outlined in 465 IAC 3-3-9. All other hearings will be held within 90 calendar days from the date the request is received by DCS

Hearing and Appeals unless the appeal is stayed or continued pursuant to applicable rule or law.

The DCS local office or appellant must notify Hearings and Appeals by notice or motion to request that the Administrative Appeal process be stayed. An Administrative Appeal Hearing will not occur during the period of the stay. Documentation must be filed with Hearings and Appeals to show that one (1) of the following applies:

1. A Child in Need of Services (CHINS) petition has been filed based on the facts of the substantiated assessment. Until the court has ruled on the petition:
 - a. Any request received for an Administrative Appeal will be stayed due to a pending CHINS matter by submitting the Preliminary Inquiry and CHINS Petition and/or other appropriate supporting documentation, and
 - b. The substantiation will remain on the Child Protection Index (CPI) during the stay.
2. Criminal charges or a Juvenile Delinquency (JD) Petition have been filed based on the same facts and circumstances that the report of CA/N was substantiated. Until the case is resolved:
 - a. Any request received for an Administrative Appeal will be stayed due to a pending criminal or JD matter by submitting a Probable Cause Affidavit, charging information, and/or other supporting documentation, and
 - b. The substantiation will remain on the CPI during the stay.
3. An Informal Adjustment (IA) has been filed based on the same facts of the substantiated assessment and is pending. A copy of the filed IA will suffice as supporting documentation. During the stay, the substantiation will remain on the CPI; or
4. DCS has received written notification from the County Prosecutor's Office that criminal charges are under review based on the same facts and circumstances which resulted in the classification of allegations as substantiated against the perpetrator who has requested an Appeal Hearing.

If the Administrative Appeal has been stayed, either the DCS local office or appellant may request the administrative appeal process be reactivated or dismissed, when appropriate, in accordance with the order of stay of the ALJ. The stayed case will remain open on the OALP docket until it is concluded by a final ALJ decision.

The DCS Final Agency Authority (FAA) will automatically conduct Final Agency Review of decision and notify all parties of the review results upon issuance of the written decision by the ALJ, as appropriate.

Requesting an Administrative Appeal Hearing

To request an Administrative Appeal Hearing, the alleged perpetrator will submit a copy of the following documents within 30 calendar days of the date on the Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination form to DCS Hearings and Appeals:

1. Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination form;
2. Assessment of Alleged Child Abuse and Neglect (311); and
3. Request for an Administrative Appeal Hearing for Child Abuse or Neglect Substantiation form.

Note: An additional three (3) days will be allowed for mail time. If the request is received on a weekend or state holiday, the next business day is to be considered the receipt date.

Once Request is Received

When a request for an Administrative Appeal Hearing is received by DCS Hearings and Appeals, DCS Hearings and Appeals will:

1. Determine if the request is timely and complete; and

Note: If the request is not complete, DCS Hearings and Appeals will notify the alleged perpetrator of the defect in the request and allow additional time to correct the request.

2. Forward complete and timely requests for Administrative Appeal Hearings to OALP and request that OALP appoint an ALJ to conduct an Administrative Appeal Hearing.

Note: If concerns for the security of any witness, employee, or the ALJ comes to the attention of a DCS employee, the employee will notify the OALP and the DCS Local Office Director (LOD) of the county where the hearing is being conducted (if the hearing is being conducted in a DCS local office).

Preparation for the Administrative Appeal Hearing

The DCS local office representative will:

1. Review assessment documentation prior to the hearing;
2. Provide supporting evidence and potential witness information to the DCS Staff Attorney;
3. Staff the case with the DCS Staff Attorney; and
4. Bring supporting documentation to the hearing.

Note: Exhibits should be appropriately redacted to eliminate all Social Security numbers (SSN), identification of the report source, and any other information necessary for redaction.

Presenting the DCS Case at the Administrative Appeal Hearing

When presenting the DCS Case at the Administrative Appeal Hearing:

1. A DCS Attorney will present the DCS case at the Administrative Appeal Hearing and prepare for the hearing in advance including conducting staffing, witness preparation, and submitting witness/exhibit lists as ordered by the ALJ; and
2. Others (e.g., Family Case Manager [FCM], FCM Supervisor, and/or Program Manager for the Institutional Assessment Unit) may be called as witnesses or as a DCS client representative.

After the Administrative Appeal Hearing

Following the Administrative Appeal Hearing:

1. The ALJ will issue a recommended decision to uphold or reverse DCS or remand the matter to DCS; and
2. The OALP Coordinator will ensure the following persons are notified of the recommended decision:
 - a. The appellant;
 - b. The appellant's representative or legal counsel, if applicable;
 - c. The DCS LOD of the county who assessed the case;
 - d. The DCS FAA; and
 - e. DCS Attorney of record.

Final Agency Review

For Final Agency Review, the DCS FAA will:

1. Automatically conduct Final Agency Review of decision upon issuance of the written recommended decision by the ALJ, as appropriate; and

Note: The DCS FAA may schedule status conferences or briefing deadlines during the Final Agency Review, however, failure to attend these status conferences or respond to briefing deadlines will not result in a dismissal of the case or a failure of the FAA to issue a decision on the case.

2. Notify all parties of the results of the review upon completion of the Final Agency Review.

Note: The DCS FAA may uphold, reverse, remand, or modify the ALJ's recommended decision. If the appellant is dissatisfied with the results, the appellant may seek judicial review as provided in IC 4-21.5-5.

Administrative Appeal of the Denial of Administrative Review

For an Administrative Appeal of the Denial of Administrative Review:

1. The Administrative Appeal of the Denial of Administrative Review will be heard by an ALJ and will be limited to the denial itself;

Note: The Administrative Appeal Hearing will not include the merits of the underlying substantiation.

2. The ALJ may recommend that the denial be upheld or reversed. The recommendation will be sent for Final Agency Review by the DCS FAA; and
3. The DCS FAA will conduct the review and will notify the appellant of the result:
 - a. The appellant may request judicial review of that decision in accordance with IC 4-21.5-5 if the denial is upheld, or
 - b. The case will be remanded to DCS to complete an Administrative Review if the denial is reversed.

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RELEVANT INFORMATION

Definitions

Administrative Hearing Officer

Administrative Hearing Officer refers to an individual who presides over an administrative hearing. An Administrative Hearing Officer is also commonly referred to as an Administrative Law Judge (ALJ).

Appellant

An appellant is the person identified as a substantiated perpetrator of CA/N who has completed an Administrative Review by DCS and has timely submitted a complete request for an Administrative Appeal Hearing.

Child Care Worker (CCW)

DCS defines "Child Care Worker", per IC 31-9-2-16.6, as a person who:

1. Is employed or actively seeking employment (other than self-employment as an owner/operator) at any of the following types of facilities:
 - a. Childcare center,
 - b. Childcare home (licensed or required to be licensed),
 - c. Childcare ministry (registered or required to be registered),
 - d. Residential group home,
 - e. Child Caring Institution (CCI),
 - f. School,
 - g. Juvenile detention center; **or**
2. Is a child caregiver who:
 - a. Provides or is responsible for providing care and supervision of a child to whom they are not a parent, stepparent, grandparent, aunt, uncle, sibling, or legal guardian or custodian with whom the person resides,
 - b. Provides the care described in (a) at a residence that is not where the child lives and outside of the presence of the child's parent, guardian, or a custodian with whom the child resides,
 - c. Is not required to be licensed as a childcare home or foster family home, and
 - d. Receives more than \$2,000 a year for providing care and supervision for a child or children; **or**
3. Has or will have direct contact with children on a regular and continuing basis through employment (or through employment being actively sought) with any agency, facility, or home that provides the following to a child or children to whom the person is not related:
 - a. A service that provides for the care, health, safety, and supervision of a child's social, emotional, and educational growth; or
 - b. Services to, or for the benefit of, children who are victims of child abuse or neglect (this includes but is not limited to agencies, facilities, and homes that have contracts with DCS to provide services).

Final Agency Action

Final agency action means, with respect to an administrative action taken by the department, the issuance of an order by the ultimate authority of the department that:

1. Disposes of all issues for all parties to an administrative proceeding regarding the action after the parties to the administrative proceeding have exhausted all administrative remedies concerning the action; and
2. Is designated as a final order by the ultimate authority of the department.

Final Agency Authority (FAA)

For purposes of an administrative proceeding regarding an action taken by DCS, the director or the director's designee is the FAA (referred to in Indiana Code as the ultimate authority) of DCS. A designee of the director must be:

1. A Deputy Director (DD) of DCS; or
2. An individual who:
 - a. Is an attorney in good standing who is admitted to the practice of law in Indiana; and
 - b. Is an employee of DCS, except as otherwise allowed under state and federal law.

Preliminary Inquiry (PI)

A PI is a written report prepared by DCS, which includes the child's background, current status, and school performance. The report relates the facts and circumstances that establish the reason for DCS involvement in both CHINS and IA cases.

Forms and Tools

- Assessment of Child Abuse or Neglect (SF 113) (311) - available in the case management system
- DCS Hearings and Appeals email - hearingsandappeals@dcs.in.gov
- [Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination \(SF 55148\)](#)
- [Request for an Administrative Appeal Hearing for Child Abuse or Neglect Substantiation \(SF 54776\)](#)

Related Policies

- [2.03 Child Care Worker Assessment Review Process](#)
- [4.45 Assessment of DCS Staff Alleged Perpetrators](#)

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LEGAL REFERENCES

- [IC 4-15-10.5: Chapter 10.5. Office of Administrative Law Proceeding](#)
- [IC 4-21.5-1-15: "Ultimate authority"](#)
- [IC 4-21.5-5: Chapter 5. Judicial Review](#)
- [IC 31-33-26: Chapter 26. Child Protection Index](#)
- [465 IAC 3: Administrative Reviews and Hearings](#)
- [465 IAC 3-2: Administrative Reviews](#)
- [465 IAC 3-2-1: Administrative review of a substantiated report of child abuse or neglect](#)
- [465 IAC 3-2-7: Denial of review](#)
- [465 IAC 3-3: Administrative Hearings](#)
- [465 IAC 3-3-9: Schedule of hearings](#)

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PRACTICE GUIDANCE- DCS POLICY 2.05

Practice Guidance is designed to assist DCS staff with thoughtful and practical direction on how to effectively integrate tools and social work practice into daily case management in an effort to achieve positive family and child outcomes. Practice Guidance is separate from Policy.

Hand Delivery

Hand delivery requires successful face-to-face contact between the alleged perpetrator and DCS representative with a documented contact in the case management.

Presenting the DCS Case at the Administrative Hearing

The appellant may present his or her case personally or through counsel or other representative. Each party has the right to bring witnesses to the hearing, present relevant evidence, and cross examine the other parties' witnesses.

Preparation for a Scheduled Administrative Appeal Hearing

DCS must prove by a preponderance of credible evidence that CA/N occurred and that the appellant is responsible for the child's abuse and/or neglect. The DCS local office should prepare exhibits and witnesses for an Administrative Appeal Hearing in the same manner as if it were preparing for a CHINS Juvenile Court Fact Finding Hearing. Thorough records and documentation should be compiled for presentation at the Administrative Appeal Hearing as DCS local office exhibits. All exhibits must be provided to the ALJ.

Note: The use of audio or video recordings, including forensic interviews, can be helpful in proving a DCS case. If submitted as an exhibit, it must be in a format that can be played at the hearing (laptop computer, recorder, etc.).

Location of Hearings

All hearings will be held in a pre-determined centralized location near the county of residence of the appellant, or in Indianapolis, Indiana. The ALJ may order a hearing site other than those identified in the event of natural disaster or other reason as determined by the ALJ.

Note: Hearings may also be conducted via telephone or video conference if approved by the ALJ.

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